IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.Rev.Pet.No. 300 of 1999()

CC.450/1989 OF JFCM, WADAKKANCHERRY
CRA.192/1997 of SESSIONS COURT, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED :

C.V.JOHNY
S/O.VARATHAPPAN
CHERUVATHUR HOUSE
CHELAKKARA.

BY ADV. SRI.P.K.ASHOKAN
SRI.K.S.SAJEEV KUMAR

RESPONDENTS 1 & 2/COMPLAINANT/RESPONDENT:

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1. THE FOOD INSPECTOR
   WADAKKANCHERRY CIRCLE.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.NO.300/99

ORDER ON CRL.M.P.NO.1250/99 IN CRL.R.P.NO.300/99

DISMISSED

20.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.300 of 1999

Dated this the 20th day of June, 2007

O R D E R

The revision petitioner is the accused in C.C.450/89 who stands convicted for the offence under Section 16(1)(a)(1) read with Section 7(1) and (V) of the PFA Act.

2. The prosecution allegation is that on 28.4.1987, the accused sold weighing 100 gms. of coriander powder which was purchased by Food Inspector from the out fit of the accused was found to be not conforming to the standard prescribed vide appendix B.A.05.08.01 of the PFA Rules. The original case i.e., S.T. 891/87 was later converted as C.C.450/89. The accused was convicted and sentenced but in appeal i.e., Crl.A.No.192/97, Sessions Court remanded the matter providing an opportunity to the accused to invoke under Section 20A of the PFA Act.

2. The evidence adduced in the matter consisted the testimony of PWs' 1 to 4 and Exts. P1 to P23. After remand, PW1 was ordered to be recalled but it was reported that he is no more. After remand, the accused deposed as DW1. The accused was then convicted and sentenced to undergo simple

imprisonment for six months and to pay fine of Rs.1,000/- and in default, to undergo simple imprisonment for two months.

3. The contention of the revision petitioner is that it is established from Ext. P4 the label contained in the packet of the article i.e. coriander powder was manufactured by Marali Traders, Pollachi and hence he is entitled to the protection of Section 19(2) in view of the proviso to Section 14 of the Prevention of Food Adulteration Act. It is his case in his testimony that he had obtained the bill. It is pointed out that he was examined subsequently in November 1996. i.e., after about 10 years and hence he could not produce the same. The counsel has relied on the decision of this court in Sainudheen vs. Food Inspector (2002 KLT (1) 703) in support of the contention that Food Inspector ought to have collected the bill and also indicted the manufacture. The appellate court has rejected the contention as Ext. P4 did not comply with the formalities envisaged under the statute vide Rule 32 and in particular form VIA certification. It is pointed out that the process issued to the manufacturer stands returned with the endorsement that the firm is no longer in existence. It is pointed out that 20 years have elapsed since

the commencement of the proceedings. I find that evidently the accused has been prejudiced in the circumstances of the case as PW1 was not available when the case was reconsidered and further evidence adduced. In the circumstances, I find that it stands established that the accused purchased commodity from a particular firm situated at Pollachi. The mahazar did not contain any mention as to the query regarding the bill, if any. In the circumstances, I find that the accused entitled to benefit of doubt. The conviction and sentence confirmed by the court below is set aside. The accused/revision petitioner is acquitted.

The criminal revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

csl